

## Exhibit C

IC0225b.txt

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2 A P P E A R A N C E S:

IC0225b.txt

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4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, L.L.P.  
5 Attorneys for Debtor  
6 333 West Wacker Drive  
Chicago, Illinois 60606-1285

7 BY: JOHN K. LYONS, Esq., of Counsel

8

9 NEW YORK U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF

10 Attorneys for witness  
86 Chambers Street  
New York, New York 10007

11 BY: MATTHEW L. SCHWARTZ, Esq., of Counsel

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2 IT IS HEREBY STIPULATED AND

3 AGREED that the filing and sealing of  
4 the within deposition be, and the  
5 same are hereby waived;

6 IT IS FURTHER STIPULATED AND

7 AGREED that all objections, except as

IC0225b.txt

8           to the form of the question, be and  
9           the same are hereby reserved to the  
10          time of the trial;  
11           IT IS FURTHER STIPULATED AND  
12          AGREED that the within deposition may  
13          be sworn to before any Notary Public  
14          with the same force and effect as if  
15          sworn to before a Judge of this  
16          Court;  
17           IT IS FURTHER STIPULATED that  
18          the transcript is to be certified by  
19          the reporter.

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2       M A R G A R E T    M A L L O Y, called as a  
3           witness, having been first duly sworn by  
4           I. Iris Cooper, a Notary Public within and  
5           for the State of New York, was examined and  
6           testified as follows:

7           MR. SCHWARTZ: John, before we  
8           start, we've already told you that the  
9           answers to a lot of the questions  
10          today are going to evoke  
11          attorney-client privilege or work

12    IC0225b.txt  
13    product or government deliberative  
14    process information. As I also  
15    explained, we'll try to give you some  
16    latitude. I assume that we can agree  
17    up front that any answers that are  
18    given today won't affect broader  
19    waivers of the privilege.

20    MR. LYONS: I don't think  
21    we're in position to agree to that  
22    because we no longer need to follow up  
23    on answers that the deponent gives, so  
24    I don't think we can agree right now  
25    to that. So I think what we need to  
  do is just proceed forward, and you

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1  
2    can certainly state your objections on  
3    the record which you deem necessary to  
4    safeguard privileges, instruct the  
5    witness not do answer. Delphi in turn  
6    will seek whatever inference from the  
7    judge resulting from that invocation  
8    of privilege.

9    DIRECT EXAMINATION

10    BY MR. LYONS:

11    Q         Can you please state your name for  
12    the record.

13    A         Margaret Malloy.

14    Q         Ms. Malloy, what is your current  
15    occupation?

16    A         I'm a trial attorney at the EEOC.

IC0225b.txt

17 Q And when did you obtain that  
18 position?

19 A I began on December 26, 2006.

20 Q And what did you do before that,  
21 before you took that position?

22 A I was an associate at a law firm.

23 Q And what's the name of the law firm?

24 A Gladstein, Reif & McGinnis.

25 Q How long were you an associate

6

1  
2 there?

3 A Six years.

4 Q Before you became an associate at  
5 Gladstein, what was your occupation?

6 A I clerked for a judge.

7 Q And who did you clerk for?

8 A Denise Coat.

9 Q What type of judge was she?

10 A U.S. District Court judge.

11 Q For the Southern District of  
12 New York?

13 A Yes.

14 Q And before you clerked for the U.S.  
15 District Court for the Southern District of  
16 New York, did you have any other occupations or  
17 jobs?

18 A Legal jobs?

19 Q Legal jobs first.

20 A I graduated from law school right

IC0225b.txt

21 before my clerkship.

22 Q So you went to clerk straight from  
23 law school?

24 A Yes.

25 Q And before you went to law school,

7

1

2 did you have any other jobs?

3 A Yes, I did.

4 Q Can you briefly go through your  
5 jobs, briefly?

6 A Immediately before I went to law  
7 school, I had been working for Clean Water Action.

8 Q In your other jobs, did you have any  
9 other investigative duties, with any of your jobs  
10 prior to becoming a clerk for the Southern  
11 District of New York.

12 A No, I don't think so.

13 Q What areas of law did you practice  
14 as an associate of Gladstone?

15 A Gladstein.

16 Q I'm sorry. Gladstein.

17 A Labor and employment.

18 Q Was that for your six years there?

19 A Yes.

20 Q So you testified that you had joined  
21 the U.S. Attorney's office on December 26, 2006.

22 MR. SCHWARTZ: EEOC.

23 Q EEOC. I'm sorry. December 26,  
24 2006. When did you first become involved in the  
25 Straughter matter?

IC0225b.txt

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2 A I don't recall exactly.

3 Q Is there anything that would refresh  
4 your recollection on that?

5 MS. GROSSMAN: You can answer  
6 yes or no.

7 THE WITNESS: There might be  
8 something that would refresh my  
9 recollection, but it might be  
10 privileged.

11 Q Well, let's look at your  
12 declaration, which I'll mark as deposition Exhibit  
13 No. 1.

14 (Declaration of Margaret  
15 Malloy was marked as Exhibit No. 1 for  
16 identification on this date.)

17 Q And also to be marked as Exhibit No.  
18 2 will be the exhibits to the declaration.

19 (Exhibits to declaration of  
20 Margaret Malloy was marked as Exhibit  
21 No. 2 for identification on this  
22 date.)

23 MR. LYONS: For the witness's  
24 copy, we actually inserted tabs. For  
25 my copy and your copy we don't have

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2 tabs.

3 Q IC0225b.txt  
4 Ms. Malloy, in connection with the  
5 motion for leave to file late claim filed by the  
6 EEOC in the Delphi bankruptcy case, you submitted  
7 a declaration and exhibits. Can you please review  
8 Exhibit Nos. 1 and 2 and confirm for us that those  
9 are true and correct copies of your declaration  
and attached exhibits?

10 A Cursory review, they appear to be  
11 true and correct copies.

12 Q Thank you. If you look at Paragraph  
13 No. 3 of Exhibit No. 1, which is your declaration,  
14 you state that you're the trial attorney assigned  
15 to represent the EEOC in the Equal Employment  
16 Opportunity Commission versus Delphi Corp., which  
17 is No. 07 Civ. 640 which is pending in the U.S.  
18 District Court for the Western District of  
19 New York. Is that true?

20 A It's U.S. Civ. 6470.

21 Q I'm sorry. Is that true that you're  
22 the trial attorney assigned to the represent the  
23 EEOC in that matter?

24 A Yes.

25 Q Do you recall when you were assigned

10

1 2 to represent the EEOC in that matter?

3 A I don't recall. It was before the  
4 Lawsuit was filed.

5 Q Do you know how long before the  
6 Lawsuit it was filed?

7 A within a few months before the

IC0225b.txt

8      Lawsuit was filed.

9                Q        Why don't we take a look at  
10     Paragraph No. 20 of your declaration, your  
11     declaration states, and I'm just paraphrasing  
12     here. I'm omitting certain of the words of your  
13     declaration. It states that on June 19, 2007, the  
14     case which was the charge filed by Mr. Straughter  
15     was forwarded to the legal unit of the EEOC's  
16     New York district office?

17                A        That's correct, it states that.

18                Q        Does that refresh your recollection  
19     as to when you were assigned this matter?

20                        MR. SCHWARTZ: It's a yes or  
21     no question.

22                        THE WITNESS: No.

23                Q        Okay. Let's go back to your  
24     declaration. We'll take it paragraph by  
25     paragraph. If you can look at Paragraph No. 4, it

11

1     states that on or about August 28, 2006, the EEOC  
2     national call center was first contacted about a  
3     potential claim of discrimination by Stanley  
4     Straughter, a Delphi employee in Rochester,  
5     New York.

7                        Do you have any personal knowledge  
8     as to that contact with the EEO national call  
9     center by Mr. Straughter?

10                A        No.

11                Q        Paragraph No. 5 states, over the

12 next several months, the EEOC worked with  
13 Straughter to prepare and finalize a formal charge  
14 of discrimination.

15 Is it true that over the next  
16 several months the EEOC worked with Straughter to  
17 prepare and finalize a formal charge of  
18 discrimination?

19 A Yes, that's correct.

20 Q Did you work on this effort?

21 MR. SCHWARTZ: Objection.

22 calls for privileged communications,  
23 attorney work product, government  
24 deliberative process information.

25 Q who worked for Mr. Straughter --

12

1 strike that. You can answer the question.

3 A I'm sorry. Which question is  
4 pending?

5 Q Did you work with Mr. Straughter --

6 MR. SCHWARTZ: When I assert  
7 privileges, do I need to say every  
8 time that I also instruct her not to  
9 answer?

10 MR. LYONS: Yes.

11 MR. SCHWARTZ: I instruct her  
12 not to answer the previous question.

13 MR. LYONS: Please note the  
14 witness is conferring with counsel.

15 THE WITNESS: He told me I can  
16 make that point. So the point was

IC0225b.txt

17           that I was not yet employed by the  
18           EEOC at that time.

19           Q       So up until December 26, 2006, you  
20        did not have any involvement in the investigation  
21        of Mr. Straughter's charge?

22           A       That's correct.

23           Q       Have you spoken with Mr. Straughter?

24           A       Yes, I have.

25           Q       When was the first time you spoke

13

1  
2       with Mr. Straughter?

3                   MR. SCHWARTZ: Objection.

4                   Calls for attorney work product and  
5                   government deliberative process  
6                   information.

7                   MR. LYONS: And you instruct  
8                   the witness not to answer?

9                   MR. SCHWARTZ: And I instruct  
10                  the witness not to answer. I think I  
11                  can say for the record that whenever I  
12                  invoke the attorney-client privilege,  
13                  the attorney work product with the  
14                  government deliberative process of  
15                  privilege that I'm also instructing  
16                  the witness not to answer. It is a  
17                  continuing instruction.

18                   THE WITNESS: I'll just add  
19                  that the EEOC takes the position that  
20                  our communications with claimants in

21                           **IC0225b.txt**  
22                           our cases are protected by the  
23                           attorney-client privilege as well.

24                           MR. SCHWARTZ: So also the  
25                           attorney-client privilege trifecta.

25                           Q        Who is the primary investigator of

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1                           1  
2                           Mr. Straughter's charge?

3                           A        Jennifer Carlo.

4                           Q        Has she been the primary  
5                           investigator from the time that Mr. Straughter  
6                           made his allegations to the EEOC through today?

7                           A        My knowledge of that is based on the  
8                           documents that you have before you. Based on  
9                           those documents, the answer to that is yes.

10                          Q        Do you know from your personal  
11                          knowledge whether Ms. Carlo was the primary  
12                          investigator from the time that Mr. Straughter  
13                          made his allegations through today?

14                          A        Since I wasn't working for the  
15                          agency prior to December 26, 2006, no.

16                          Q        From the time that you became  
17                          involved in the Straughter charge through today,  
18                          has Ms. Carlo been the primary investigator for  
19                          Mr. Straughter's charge?

20                          A        Yes.

21                          Q        Have there been any other  
22                          investigators assigned to the charge in the EEOC's  
23                          lawsuit in the Western District of New York?

24                          A        Not to my knowledge.

25                          Q        Turn to Paragraph No. 13 of your

IC0225b.txt

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1  
2 declaration. Paragraph No. 13 states that on  
3 January 31, 2007 Delphi responded to the EEOC's  
4 request for information.

5                  Does this refresh your recollection  
6 as to when you first became involved in the  
7 Straughter charge?

8                  A        No.

9                  Q        Do you recall receiving the response  
10 that Delphi made to the EEOC's request on or about  
11 January 31, 2007?

12                  MR. SCHWARTZ: Are you asking  
13 whether she received it on or about  
14 January 31, 2007 or if she recalls  
15 receiving the January 31, 2007  
16 response?

17                  Q        Whether you recall receiving the  
18 January 31, 2007 response on or about January 31,  
19 2007?

20                  A        No, I do not. I just mention that  
21 if I had received something at that time and I do  
22 not recall receiving anything, but if I did, the  
23 only way I could have received it is from the  
24 investigator, and that would be privileged  
25 communication.

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1  
2                  Q        Look at Paragraph No. 14. The

3 second sentence states, therefore, on or about  
4 February 26, 2007, the EEOC sent Delphi a second  
5 request for information.

6 Were you involved in formulating  
7 that second request for information on or about  
8 February 26, 2007?

9 MR. SCHWARTZ: Objection.

10 calls for attorney-client privilege,  
11 work product protection, and  
12 government deliberative process  
13 privilege.

14 Q What is the basis for your statement  
15 that on or about February 26, 2007 the EEOC sent  
16 Delphi a second request for information?

17 A The EEOC's files.

18 Q That's your sole basis for that  
19 statement?

20 A That's all that I can recall would  
21 be the basis for that that is reflected in the  
22 EEOC's investigative file.

23 Q Paragraph No. 15, at or about  
24 April 4, 2007 Delphi finally responded to the  
25 EEOC's second request for information, and it goes

17

1 on and on. Were you involved in the EEOC's  
2 receipt and analysis of Delphi's response to the  
3 second request for information on or about  
4 April 4, 2007?

6 MR. SCHWARTZ: Objection to  
7 form. Also objection because it calls

IC0225b.txt

8 for attorney-client privileged  
9 information, attorney work project,  
10 and government deliberative process  
11 privileged information.

12 Q Were you ever involved in analyzing  
13 Delphi's response to the EEOC's second request for  
14 information?

15 MR. SCHWARTZ: Objection to  
16 form. Objection because it calls for  
17 attorney-client privilege information,  
18 attorney work product, and government  
19 deliberative process privileged  
20 information.

21 Q Paragraph No. 16 states, throughout  
22 this give-and-take process with Delphi, the EEOC  
23 simultaneously pursued other avenues of  
24 investigating the charge of discrimination,  
25 including collecting further information from

18

1  
2 Straughter. What avenues of investigation of the  
3 charge of discrimination did the EEOC pursue?

4 MR. SCHWARTZ: Objection.  
5 Calls for attorney-client privileged  
6 information, attorney work product,  
7 and government deliberative process  
8 information, other than, of course,  
9 what's stated in the declaration,  
10 which is that the EEOC collected  
11 further information from

12    IC0225b.txt  
12    Mr. Straughter.

13    Q         Let's read Paragraph No. 16.

14    Throughout this give-and-take process with Delphi,  
15    the EEOC simultaneously pursued other avenues of  
16    investigating the charge of discrimination,  
17    including collecting further information from  
18    Straughter.

19    Is your statement that the EEOC in  
20    pursuing other avenues of investigation of the  
21    charge of discrimination solely collected further  
22    information from Straughter?

23    A         No.

24    Q         So apart from collecting  
25    information, further information from Straughter,

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19

2    what other avenues of investigation did the EEOC  
3    pursue relating to Mr. Straughter's charge of  
4    discrimination?

5    MR. SCHWARTZ: Objection.

6    Calls for attorney-client privileged  
7    information, attorney work product,  
8    and government deliberative process  
9    privileged information.

10    Q         As reflected in Paragraph No. 16,  
11    did the EEOC ever discuss with any other employees  
12    at Delphi any potential violations of the ADA  
13    relating to medical release forms?

14    MR. SCHWARTZ: Objection.

15    Privileged. And can we agree to save  
16    some breath that I can simply say

IC0225b.txt

17 privileged when I mean to invoke all  
18 three of those privileges?

19 MR. LYONS: Yes. And if you  
20 decide to drop one of the privies, why  
21 don't you so note.

22 MR. SCHWARTZ: I certainly  
23 will. I assume that your questions  
24 about your investigation are questions  
25 about prelitigation investigation;

20

1  
2 correct?

3 MR. LYONS: Unless otherwise  
4 noted, I try to put a time frame that  
5 I'm asking the question. I mean,  
6 Paragraph No. 16, let's confirm that.  
7 Paragraph No. 16 does not put a time  
8 frame on it.

9 Q Is Paragraph No. 16 meant to just  
10 cover the period prior to commencement of the  
11 federal EEOC action.

12 A That's my understanding of Paragraph  
13 No. 16.

14 Q Is Paragraph No. 16 based upon your  
15 personal knowledge?

16 A Paragraph No. 16 is based on my  
17 review of the investigative file.

18 Q Other than your review of the  
19 investigative file, is there any basis, other  
20 basis, for your statements in Paragraph No. 16?

21                   A         I would like to confer with my  
22       counsel as to whether or not my answer would be  
23       privileged.

24                   MR. LYONS: It asks for a yes  
25       or no. Whether it goes into more than

21

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2                   a yes or no, then I can understand why  
3       there might be a --

4                   MR. SCHWARTZ: I do appreciate  
5       that. But given what you said at the  
6       outset that there would be no waivers,  
7       no subject matter waivers, we need to  
8       be very careful.

9                   MR. LYONS: Note conference  
10      off the record.

11                   (Whereupon, a conversation was  
12      held off the record.)

13                  Q       What was the basis for your  
14       statement in Paragraph No. 16 of the declaration?

15                  A       The investigative file. The  
16       documents in the investigative file.

17                  Q       Did you have any other basis?

18                  A       No, not that I recall.

19                  Q       Paragraph Nos. 4, 5, 6, 7, 8, 9, 10,  
20       11, 12, 13, 14, and 15, what was the basis for  
21       your statements in those paragraphs?

22                  A       The EEOC's investigative file.

23                  Q       Did you have any other basis other  
24       than the file for those statements?

25                  A       No.

IC0225b.txt

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2 Q Paragraph No. 17, what was the basis  
3 for your statement in Paragraph No. 17?

4 A The EEOC's investigative file.

5 Q Did you have any other basis for the  
6 statement in Paragraph No. 17?

7 MR. SCHWARTZ: Objection.

8 THE WITNESS: Not that's not  
9 privileged.

10 MR. SCHWARTZ: It's quotation  
11 from a document that's dated. I'm not  
12 sure exactly what you're getting at.

13 Q Can you answer the question?

14 A The basis for my statement in  
15 Paragraph No. 17 is the document itself that's  
16 quoted, the letter of determination.

17 Q Did you have any involvement in the  
18 preparation of the conclusions contained in the  
19 letter of determination?

20 MR. SCHWARTZ: Objection.

21 That is attorney work product,  
22 attorney-client privileged  
23 information, government deliberative  
24 process privileged information.

25 MR. LYONS: I don't believe

23

1

2 the fact of whether or not you were

IC0225b.txt  
3 involved falls within any of those  
4 privileges. Would you like to  
5 reconsider your insertion, your  
6 instruction not to answer?

7 MR. SCHWARTZ: Okay. No. I  
8 think that it's privileged.

9 MR. LYONS: Okay. Just so I  
10 understand to be clear, the U.S.'s  
11 position is that your involvement or  
12 non-involvement in the issuance of the  
13 letter of determination is privileged?

24

1  
2 Q Were you involved in the EEOC's  
3 issuance of it's letter of determination  
4 referenced in Paragraph No.17 of your declaration?

5 MR. SCHWARTZ: Objection to  
6 the form

7 Q You can answer.

IC0225b.txt

8           A       I don't know what it really means to  
9   be involved in the issuance of the LOD.

10          Q       Prior to May 22, 2007, were you  
11   involved in the investigation referenced in the  
12   first sentence of the block quote in Paragraph No.  
13   17?

14          A       My attorney is not objecting but I  
15   think that calls for privileged information.

16                 MR. SCHWARTZ: Okay. We'll  
17   object on the basis of privilege.

18                 MR. LYONS: So you're  
19   instructing not to the answer and  
20   we've got the protocol.

21                 MR. SCHWARTZ: Yes.

22                 MR. LYONS: And you're  
23   instructing the witness not to answer?

24                 MR. SCHWARTZ: Yes. I think,  
25   John, that involved is a very

25

1  
2                 difficult word in this context. You  
3   might want to try and be clear with  
4   specific reference to the last  
5   question.

6                 MR. LYONS: I put a clear  
7   temporal limit on this. I said on or  
8   before May 22, 2007 were you involved  
9   in the investigation of  
10   Mr. Straughter's charge of  
11   discrimination that's referenced in

12    IC0225b.txt  
13    the letter of determination that's set  
14    forth in Paragraph No. 17 of your  
  declaration.

15    MR. SCHWARTZ: My point to you  
16    is that involved is a very ambiguous  
17    word in this context. Specifically,  
18    it's ambiguous as to whether she was  
19    involved as a lawyer or whether she  
20    was involved as investigating.

21    Q         Were you involved in any capacity on  
22    or prior to May 22, 2007 in the Straughter charge  
23    of discrimination?

24    A         Yes.

25    Q         And in what capacity were you

26  
1  
2    involved?

3    A         In my capacity as an attorney  
4    legally involved in it.

5    Q         Does Paragraph No. 17 refresh your  
6    recollection as to when you became involved in the  
7    Straughter charge of discrimination?

8    A         Yes.

9    Q         And based upon your refreshed  
10    recollection, when do you believe you first became  
11    involved in the Straughter charge of  
12    discrimination?

13    A         All I can say is that it was before  
14    May 22, 2007.

15    Q         If we go to the last sentence of  
16    Paragraph No. 17, it states that the EEOC also

IC0225b.txt

17 informed Delphi that it would like to eliminate  
18 the unlawful practices through informal methods of  
19 conciliation and invited Delphi to discuss  
20 settlement of the charge.

21 Do you recall having discussions  
22 with Delphi regarding settlement of the charge on  
23 or about May 22, 2007?

24 A No.

25 Q Paragraph No. 18 of your declaration

27

1  
2 references, and perhaps this might be more  
3 efficient. If you can turn to Exhibit N to your  
4 declaration. Is Exhibit N which you're reviewing  
5 right now, is that, to the best of your knowledge,  
6 Exhibit N to your declaration?

7 A Yes.

8 Q Do you recall seeing a copy of this  
9 letter dated May 23, to Mr. Peterson at Delphi on  
10 or about May 23, 2007?

11 A I don't recall when I saw it.

12 Q Were you involved in the preparation  
13 of this letter which is Exhibit N to your  
14 declaration?

15 MR. SCHWARTZ: Objection.

16 Privileged.

17 Q Your declaration states that the  
18 following day, May 23, 2007, that the EEOC  
19 contacted Delphi. What was the basis of the  
20 statement that the EEOC contacted Delphi? What

IC0225b.txt  
21 was your basis -- I'm sorry. Let me back up.  
22 Paragraph No. 18 of your declaration  
23 states that following day on May 23, 2007 the EEOC  
24 contacted Delphi to begin conciliation efforts and  
25 outlined a comprehensive remedy for Delphi's

28

1  
2 discriminatory practices.

3 what was the basis for your  
4 statement in Paragraph No. 18 that I just --

5 A Exhibit A, the letter.

6 Q Is there any other basis?

7 A I don't recall whether the letter  
8 was faxed in addition to being mailed. The May  
9 23rd date comes from the letter.

10 Q Were you aware of any other contacts  
11 other than the letter marked as Exhibit N to  
12 Delphi discussing the subject matter of Paragraph  
13 No. 18 of your letter?

14 A Not that I recall.

15 Q To your declaration. I'm sorry.

16 If you can turn to Paragraph No. 16  
17 of your letter, Exhibit N to your declaration.

18 A The EEOC's letter?

19 Q Correct. It begins with respondent  
20 will make charging party whole for all losses  
21 suffered as a result of discrimination?

22 A Yes.

23 Q Including lost wages and fringe  
24 benefits plus interest?

25 A I see that.

IC0225b.txt

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2 Q Did the EEOC make any calculation as  
3 to the amount necessary to make whole  
4 Mr. Straughter for losses suffered as a result of  
5 discrimination?

6 MR. SCHWARTZ: Objection.

7 Privileged. I also have to say this  
8 is a bit far outside the purpose of  
9 this deposition.

10 Q In Paragraph No. 17 of Exhibit N,  
11 the letter states, respondent will compensate  
12 charging party for emotional harm and distress,  
13 pain, suffering, humiliation or embarrassment in  
14 the amount of \$115,000.

15 Were you involved in the calculation  
16 of the \$115,000 that the EEOC was necessary to  
17 compensate Mr. Straughter for emotional harm and  
18 distress, pain, suffering, humiliation or  
19 embarrassment?

20 MR. SCHWARTZ: Objection.

21 Privileged. Also irrelevant.

22 Q Paragraph No. 19 of Exhibit N to  
23 your declaration states, respondent will provide,  
24 make whole relief for any and all other  
25 individuals determined to have been harmed by

30

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2 respondent's discriminatory practices.

3                           IC0225b.txt  
4                           Are you aware of any other  
5                           individuals who have suffered harm as a result of  
6                           Delphi's alleged discriminatory practices  
7                           referenced in the EEOC's lawsuit against Delphi?

8                           MR. SCHWARTZ: Objection.

9                           Privileged. Also relevance. At this  
10                          point, could you explain the relevance  
11                          of these questions about damages in  
12                          this suit. I understand they go to  
13                          potential value of our claim to  
14                          bankruptcy, but certainly not to its  
                              timeliness.

15                          MR. LYONS: I think the  
16                          relevance is pretty obvious since to  
17                          the extent that the EEOC was aware of  
18                          prepetition claims, potential  
19                          prepetition claims, and did nothing  
20                          for 13 months from the time that  
21                          Mr. Straughter walked in the door,  
22                          that that goes directly to excusable  
23                          neglect.

24                          MR. SCHWARTZ: I'm not sure  
25                          that I follow, but --

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2                          Q       If I look at Paragraph No. 20 to  
3                          Exhibit M to your declaration, it states,  
4                          respondent will create a \$200,000 fund to provide  
5                          for compensatory damages for any and all  
6                          individuals who have been required to sign an  
7                          unlawful medical release at any time from

IC0225b.txt

8 January 1, 2005 to the present.

15 MR. SCHWARTZ: Objection.

16 Privileged.

17 Q Do you know the basis for setting a  
18 \$200,000 figure to compensate any and all  
19 individuals who may have been harmed by reason of  
20 the failure to sign a medical release?

21 MR. SCHWARTZ: Objection.

22 Privileged.

23 Q Are you aware of any Delphi  
24 employees who were harmed by Delphi's alleged  
25 requirement to sign a medical release, other than

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2 Mr. Straughter?

3 MR.

10 MR. SCHWARTZ: You're asking  
11 if she knew it at the time or if there

12    IC0225b.txt  
13    were folks who were injured at the  
14    time?

15    Q         As you sit here today, as you sit  
16    here today, are you aware of any Delphi employees  
17    that suffered harm as a result of Delphi's alleged  
18    policy to require medical release forms from  
19    employees?

20    MR. SCHWARTZ: This is aside  
21    from the ones your own client has  
22    identified in response to request for  
23    information or including those folks?

24    MR. LYONS: Any employees.

25    MR. SCHWARTZ: I think that  
  she identified those people before.

33

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2    THE WITNESS: There were, I  
3    believe, three other individuals  
4    identified in Delphi's response to a  
5    request for information.

6    Q         And we'll turn to that. Other than  
7    those three individuals, are you aware of any  
8    other Delphi employees who suffered harm based  
9    upon Delphi's alleged policy to require medical  
10   release forms?

11    MR. SCHWARTZ: Objection.  
12    Privileged.

13    Q         Paragraph No. 21 of your declaration  
14    refers to steps that the EEOC must take before  
15    filing a federal court action to remedy alleged  
16    violations of the ADA. What is the basis of your

IC0225b.txt

17 knowledge of the statements made in Paragraph No.  
18 21 of your declaration?

19 A The regional's attorney manual  
20 reflects those steps.

21 Q Do you have any other basis for your  
22 statements made in Paragraph No. 21 of your  
23 declaration?

24 MR. SCHWARTZ: Objection to  
25 the form.

34

1  
2 Q You can answer.

3 A I'm aware of the steps we have to  
4 take because of my jobs a trial attorney of the  
5 legal unit of the EEOC.

6 Q Are you aware of the steps -- are  
7 you aware of any steps that the EEOC must take to  
8 file a proof of claim in a bankruptcy case?

9 A I am aware of some of the steps,  
10 yes.

11 Q What are those steps?

12 A I can only testify as to this case.

13 Q This case is your only source of  
14 knowledge as to the steps?

15 A Yes.

16 Q To file a proof of claim?

17 A Yes.

18 Q And what are those steps?

19 A In this case, we had to mail our  
20 proof of claims to Kurtsman something or other in

IC0225b.txt

21 California.

22 Q Did you need to get advanced  
23 authorization from the commissioner at EEOC  
24 headquarters in Washington prior to filing your  
25 proofs of claim?

35

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2 A No.

3 Q What authorizations do you need to  
4 file a proof of claim in a bankruptcy case on  
5 behalf of the EEOC?

6 A I'm not aware of any particular  
7 authorizations that we require.

8 (Declaration of Margaret  
9 Malloy was marked as Exhibit No. 3 for  
10 identification on this date.)

11 Q Marked as Exhibit No. 3 is the  
12 order -- well, I'll just refer to it as the bar  
13 date order. Have you ever seen a copy of the bar  
14 date order referenced in Exhibit No. 3?

15 A I don't recall.

16 Q Do you recall learning that there  
17 was a bar date order entered in the Delphi  
18 bankruptcy case?

19 A I have learned that.

20 Q When did you first become aware of a  
21 bar date order entered in the Delphi's bankruptcy  
22 case?

23 A I don't recall.

24 Q Is there anything that would refresh  
25 your recollection?

IC0225b.txt

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2 A I don't know what would refresh my  
3 recollection.

4 Q Were you aware of the bar date order  
5 before the EEOC Lawsuit was filed in the Western  
6 District of New York?

7 A I don't recall.

8 Q Who handles compliance with bar date  
9 orders at the EEOC?

10 A I don't know.

11 MR. SCHWARTZ: Assumes facts  
12 not in evidence.

13 Q How did the bar date order in  
14 Delphi's case come to your attention?

15 A I don't recall.

16 Q Did you --

17 A It had to be a privileged  
18 communication, though.

19 Q So you became aware of the bar date  
20 order through communication with another attorney  
21 at the EEOC?

22 MR. SCHWARTZ: Objection.

23 MR. LYONS: Fact of a  
24 conversation isn't privileged.

25 MR. SCHWARTZ: Lacks

37

1

2 foundation.

3 Q IC0225b.txt  
4 what was the basis for your  
5 statement that you believe if it came to your that  
6 it was due to a privileged conversation?

7 A I don't know how else it would have  
8 come to my attention.

9 Q Were you aware of the Delphi  
10 bankruptcy case prior to filing your proofs of  
claim?

11 A Yes.

12 Q Were you involved in the preparation  
13 of the proofs of claim?

14 A Yes.

15 Q Did you have primary responsibility  
16 for preparing and filing the proofs of claim?

17 A Yes.

18 Q Did you review the bar date order  
19 before you filed the proofs of claim on behalf of  
20 the EEOC?

21 A I don't recall.

22 Q And I believe your prior testimony  
23 was that you did not recall learning of the bar  
date order before the EEOC filed its lawsuit  
25 against Delphi in the Western District of

38

1  
2 New York?

3 A I don't recall whether I did or not.

4 Q And you're not aware of anything  
5 that would refresh your recollection on that?

6 A No.

7 Q Were you aware that all of Delphi's

IC0225b.txt

8 employees were served the bar date order?

9 A No.

10 Q Were you aware that not a single  
11 Delphi employee filed a proof of claim alleging  
12 any EEOC violation?

13 A No.

14 MR. SCHWARTZ: That's why we  
15 have the EEOC.

16 Q Paragraph No. 21 refers to a  
17 presentation memorandum?

18 A Paragraph No. 21 of the bar date  
19 order?

20 Q I'm sorry. Paragraph No. 21 of your  
21 declaration.

22 A Yes.

23 Q Your Paragraph No. 21 states, the  
24 legal unit must prepare a presentation memorandum  
25 to the general counsel containing its assessment

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1  
2 of the case?

3 A Yes.

4 Q Does the presentation memorandum  
5 contain such an assessment of the case?

6 A The presentation memorandum is  
7 privileged.

8 Q Does it contain an assessment of the  
9 case?

10 MR. SCHWARTZ: This one or  
11 the --

12                   IC0225b.txt  
13                 Q     Does the presentation memorandum  
14                 referred to in Paragraph No. 21 of your  
15                 declaration contain an assessment of the EEOC case  
16                 filed in the Western District of New York?

17                   MR. SCHWARTZ: Objection.

18                   Privileged.

19                 Q     I'll just refer to presentation  
20                 memorandum relating to the case filed in the  
21                 Western district of New York against Delphi? Is  
22                 the presentation memorandum extensive?

23                   MR. SCHWARTZ: Objection.

24                   Privileged.

25                 Q     Does the presentation memorandum  
26                 describe the background and legal analysis

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1  
2                 involved in the case, including proof that  
3                 anticipates introducing but also to prepare a  
4                 breakdown of anticipated litigation costs?

5                   MR. SCHWARTZ: Objection to  
6                 the form. Objection. Privileged.

7                 Q     So you are unable to confirm the  
8                 statements contained in Paragraph No. 21 on the  
9                 basis that such confirmation would be privileged?

10                A     That's not a correct representation,  
11                no.

12                Q     Could you please confirm then that  
13                the presentation memorandum is extensive?

14                A     Paragraph No. 21 refers to  
15                presentation memoranda in general and what is  
16                required to be included in them. The questions

IC0225b.txt

17 you're asking, however, relate to the presentation  
18 memorandum prepared in this case.

19 Q Was a presentation memorandum  
20 presented to the general counsel for the Delphi  
21 case?

22 A Yes.

23 Q And was that presentation memorandum  
24 extensive?

25 MR. SCHWARTZ: Objection.

41

1

2 Privileged.

3 Q Did the presentation memorandum that  
4 the EEOC prepared with respect to the Delphi case  
5 discuss proof that it anticipated introducing?

6 MR. SCHWARTZ: Objection.

7 Privileged.

8 Q Did the Delphi presentation  
9 memorandum also contain a breakdown of an  
10 anticipated litigation cost?

11 MR. SCHWARTZ: Objection.

12 Privileged.

13 Q Did the Delphi presentation  
14 memorandum also include a draft of the complaint  
15 to be filed?

16 MR. SCHWARTZ: Objection.

17 Privileged.

18 MR. LYONS: For the record, we  
19 request a copy of that presentation  
20 memorandum.

21 IC0225b.txt  
22 MR. SCHWARTZ: I'm sure you'll  
23 put that in writing.  
24 MR. LYONS: It's on the record  
here.  
25 Q Paragraph No. 22 refers to a

42  
1  
2 statement that the prefiling process unfolded very  
3 quickly. what did you mean by that statement?  
4 A Just what it says.  
5 Q You have no further explanation of  
6 the first sentence of Paragraph No. 22?  
7 MR. SCHWARTZ: Objection to  
8 the form.  
9 Q You can answer.  
10 A It simply refers to the time period  
11 from the failure of conciliation to when we filed  
12 the complaint.  
13 Q And, again, the failure of  
14 conciliation referenced in Paragraph No. 20 of  
15 your declaration occurred on June 19, 2007?  
16 A That's correct.  
17 Q And the case was filed on  
18 September 28, 2007?  
19 A Correct.  
20 Q Let's turn to Exhibit R to your  
21 declaration which is the actual EEOC complaint.  
22 In the nature of action paragraph, it refers to an  
23 action under the ADA to correct unlawful  
24 employment practices and to provide relief to  
25 Stanley Straughter, who is defined as the charging

IC0225b.txt

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1  
2 party, and to a class of similarly-situated  
3 individuals who had been adversely affected by  
4 such practices.

5 Can you identify any  
6 similarly-situated individuals who had been  
7 adversely affected by the practices discussed in  
8 the complaint?

9 MR. SCHWARTZ: Objection.  
10 Privileged, except to the three that  
11 Delphi identified.

12 Q As of the time that Mr. Straughter  
13 made his charge of discrimination in September of  
14 2006, was the EEOC aware of any other  
15 similarly-situated individuals who had been  
16 adversely affected by the practices discussed in  
17 the EEOC complaint?

18 MR. SCHWARTZ: You're asking  
19 if -- I'm sorry. I didn't understand  
20 it at all.

21 Q As of the time Mr. Straughter filed  
22 his charge of discrimination in September 2006,  
23 was the EEOC aware of any similarly-situated  
24 individuals who were adversely affected by the  
25 practices discussed in the EEOC's complaint?

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2 MR. SCHWARTZ: And now you're

3                                 IC0225b.txt  
4                                 asking if they were aware of it prior  
5                                 to Mr. Straughter filing his complaint  
6                                 or if they were aware of individuals'  
7                                 complaints prior to the filing of  
8                                 Mr. Straughter's complaint.

9                                 MR. LYONS: As of the time  
10                                 Mr. Straughter filed his charge of  
11                                 discrimination in September 2006.

12                                 THE WITNESS: I'm totally lost  
13                                 now.

14                                 Q         Okay. One more time. One more  
15                                 time. At the time that Mr. Straughter filed his  
16                                 charge of discrimination in September of 2006, was  
17                                 the EEOC aware of any other similarly-situated  
18                                 individuals who were adversely affected by the  
19                                 policies discussed in the EEOC's complaint?

20                                 A         I can't testify as to that. My  
21                                 knowledge of this case is derived from the  
22                                 investigative file in this case. If other charges  
23                                 were filed, our charge filing process is  
24                                 confidential. Delphi would be aware of that.

25                                 Q         So your answer is no?

2                                 A         My answer relates only to my

45

1  
2                                 knowledge. I can't testify as to the agency's  
3                                 knowledge.

4                                 Q         What of your knowledge derived from  
5                                 the Straughter file that the EEOC maintains?

6                                 A         There's nothing --

7                                 MR. SCHWARTZ: That wasn't a

IC0225b.txt

8 question.

9 MR. LYONS: It is a question  
10 because --

11 MR. SCHWARTZ: Ask the whole  
12 question.

13 Q Does the EEOC's file that is  
14 maintained for the Straughter charge reveal any  
15 other similarly-situated individuals who have been  
16 adversely affected by the practice described in  
17 the EEOC complaint?

18 MR. SCHWARTZ: That is a  
19 totally different question. Before,  
20 you were asking whether anyone had  
21 complaints prior to Mr. -- I just want  
22 you to realize that you're changing  
23 the question, so when I object to it  
24 you don't think I'm trying to get in  
25 the way.

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1  
2 You were asking before whether  
3 they were aware prior to  
4 Mr. Straughter's complaint if anyone  
5 else had complained, and she said she  
6 was not personally aware. And now  
7 you're asking if anyone was injured.

8 MR. LYONS: Let me back up.

9 MR. SCHWARTZ: Yes.

10 Q Prior to December 26, 2006, your  
11 knowledge of the Straughter matter and any other

12 related plaintiffs is limited to the file the EEOC  
13 maintains for the Straughter matter; correct?  
14 A Well, I still don't understand the  
15 question.

16 MR. LYONS: Read the question  
17 again.

18 (Whereupon, the following was  
19 read into the record by the reporter:

20 "Question: Prior to  
21 December 26, 2006, your knowledge of  
22 the Straughter matter and any other  
23 related plaintiffs is limited to the  
24 file the EEOC maintains for the  
25 Straughter matter; correct?

47

1  
2 MR. SCHWARTZ: Objection to  
3 form.

4 THE WITNESS: I don't  
5 understand the question.

6 Q I'll try it one more time or a  
7 couple more times.

8 A Try it differently because I really  
9 don't understand.

10 Q As of the time Mr. Straughter filed  
11 his charge of discrimination with the EEOC in  
12 December of 2006, did the EEOC have any  
13 information with respect to Delphi employees who  
14 were adversely affected by Delphi's alleged policy  
15 of requiring medical releases?

16 MR. SCHWARTZ: Objection to  
Page 40

IC0225b.txt

17 form and to foundation.

18 THE WITNESS: I believe you  
19 meant to say September 2006.

20 Q September 2006.

21 A And I can't -- I have no knowledge  
22 as to that. I can't testify as to anything  
23 outside of Mr. Straughter's charge and the  
24 investigative file related to that charge.

25 Q Fair enough. And just to be clear,

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1

2 Mr. Straughter's file did not indicate or identify  
3 other Delphi employees who were adversely affected  
4 by the practices described in the EEOC complaint?

5 MR. SCHWARTZ: Well,  
6 objection. Privileged. If you want  
7 to ask if other people had made  
8 charges, that's fine.

9 Q Had other Delphi -- to follow up on  
10 that, the instruction still stands. Understood.  
11 But had other Delphi employees filed charges with  
12 the EEOC at any time?

13 A I would have no knowledge of that.

14 Q We move on. If you could go to the  
15 peripheral leaf which is Page No. 5 of the  
16 complaint marked as Exhibit R to your declaration.  
17 In the event the EEOC prevails in its lawsuit and  
18 obtains compensatory relief, that compensatory  
19 relief will only be provided to the affected  
20 employees; correct?

21 A IC0225b.txt  
22 employees?

23 Q Employees that were subject to  
24 Delphi's alleged ADA's violations.

25 A I don't think -- I think that's a

49

1  
2 question for the judge to answer.

3 Q Let me put it another way. The EEOC  
4 isn't going to keep any amount it recovers from  
5 Delphi; correct?

6 A No.

7 Q All the proceeds that it would  
8 collect would go to aggrieved employees; correct?

9 A I can't really testify as to how we  
10 would distribute proceeds.

11 Q In the EEOC's lawsuit, any  
12 compensatory relief is being sought on behalf of  
13 potentially-aggrieved Delphi employees?

14 A That's correct.

15 Q Why did the EEOC wait until  
16 November 2007 to file proofs of claim in the  
17 Delphi case when it became aware of  
18 Mr. Straughter's charge in September of 2006?

19 MR. SCHWARTZ: Objection.

20 Privileged.

21 THE WITNESS: It's October.

22 Q We file a month earlier than I  
23 thought. So are you in a position to discuss any  
24 of the facts and circumstances relating to  
25 Mr. Straughter's charge of discrimination that

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2 existed in September 2006?

3 MR. SCHWARTZ: Objection to  
4 form.

5 THE WITNESS: It seems like an  
6 argumentative question to me. If you  
7 want to ask me about facts and  
8 circumstances, then I can tell you on  
9 an individual basis whether I'm  
10 prepared to answer those questions.

11 Q Beyond reviewing the contents of  
12 files maintained for the Straughter matter, do you  
13 have any personal knowledge of any of the events  
14 discussed in your declaration?

15 A We've gone through my declaration  
16 paragraph by paragraph.

17 MR. SCHWARTZ: And she  
18 testified that she was involved in  
19 certain aspects.

20 Q And I believe the first aspects you  
21 were involved in followed the transmittal letter  
22 of the EEOC?

23 A I don't think I testified as to  
24 that, no.

25 Q Well, why don't you tell me, what's

51

1

2 the first paragraph in your declaration that

3 contains facts of which you have personal  
4 knowledge?

5 A Paragraph No. 1.

6 Q Any other paragraphs?

7 A Paragraph No. 2, Paragraph No. 3.

8 Are you waiting for me to keep going?

9 Q Please.

10 MR. SCHWARTZ: I object to the  
11 form of this question.

12 THE WITNESS: I believe I  
13 testified I don't recall at what point  
14 I became involved, and I believe I  
15 testified that it was sometime before  
16 May 22, 2007.

17 Q But which paragraph do you first  
18 have personal knowledge of facts contained in that  
19 paragraph?

20 A I don't recall which would be the  
21 first one.

22 Q Are there any paragraphs in your  
23 declaration, other than Paragraph Nos. 1 through 3  
24 that contained facts of which you have personal  
25 knowledge?

52

1  
2 A The paragraphs are written based on  
3 the investigative file. So, for example,  
4 Paragraph No. 15 is based on documents in the  
5 investigative file.

6 Q Please answer my question.

7 A Can you repeat your question.

IC0225b.txt

8 Q Please identify paragraphs that  
9 contain facts based upon your personal knowledge,  
10 other than Paragraph Nos. 1 through 3.

11 A All I can say again is I don't  
12 recall at what time I became involved in the case.

13 Q That's not my question. My question  
14 is which paragraphs contain facts based upon your  
15 personal knowledge, other than Paragraph Nos. 1  
16 through 3?

17 A All I can say is that Paragraph Nos.  
18 1 through 3 are based on my personal knowledge.  
19 The remaining paragraphs reflect documents in the  
20 EEOC's investigative file and other documents.

21 Q And are not based upon your personal  
22 knowledge?

23 A No, I won't say that.

24 Q Well, please answer then what  
25 paragraph contain facts based upon your personal

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1  
2 knowledge other than Paragraph Nos. 1 through 3?

3 A I've already answered to the best of  
4 my ability.

5 Q So you are not going to answer --  
6 you're not going to identify factual assertions  
7 contained in your declaration based upon your  
8 personal knowledge other than Paragraph Nos. 1  
9 through 3?

10 MR. SCHWARTZ: Objection.

11 Q There is a pending question.

12                   A         IC0225b.txt  
13                 I did not rely on privileged  
14                 information to prepare this document -- to prepare  
15                 this declaration. For me to answer your question  
16                 would require me to review privileged information.  
17                 So if that answers your question that the  
18                 declaration is prepared based on documents, aside  
19                 from Paragraph Nos. 1 through 3, then that's my  
20                 answer.

21                 Q         And not based upon your personal  
22                 knowledge?

23                 A         Aside from Paragraph Nos. 1 through  
24                 3?

25                   MR. SCHWARTZ: You're asking  
                       now the basis for the declaration as

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2                 opposed to whether she has personal  
3                 knowledge of the events. Very  
4                 different question.

5                   MR. LYONS: My question has  
6                 been very precise.

7                   MR. SCHWARTZ: It really  
8                 hasn't.

9                   MR. LYONS: It has. I'll do  
10                 it one more time.

11                 Q         Please identify any factual  
12                 assertions in your declaration based upon your  
13                 personal knowledge, other than Paragraph Nos. 1  
14                 through 3?

15                   MR. SCHWARTZ: Objection to  
16                 form.

IC0225b.txt

17 THE WITNESS: Paragraph No.  
18 22, I have personal knowledge of facts  
19 in that paragraph.  
20 Q All of the facts?  
21 A That is based on that paragraph, I  
22 have to read it. I have personal knowledge of  
23 those facts.  
24 Q Paragraph No. 23?  
25 A I have personal knowledge of those

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1  
2 facts.  
3 Q Paragraph No. 24?  
4 A I have personal knowledge of those  
5 facts.  
6 Q Paragraph No. 25?  
7 A I have personal knowledge of those  
8 facts.  
9 Q Paragraph No. 26?  
10 A I have personal knowledge of those  
11 facts.  
12 Q And Paragraph No. 27?  
13 A I don't have personal knowledge of  
14 all of those facts.  
15 Q What about first sentence of  
16 Paragraph No. 27?  
17 A I have personal knowledge of that.  
18 Q The second sentence?  
19 A I wouldn't really say that that's a  
20 fact.

21 Q IC0225b.txt Fair enough. The third sentence?  
22 A I have no personal knowledge of  
23 that. No, I have no personal knowledge of that.  
24 Q And the last sentence of Paragraph  
25 No. 27?

56

1  
2 A I only have partial personal  
3 knowledge.  
4 Q And what's the partial personal  
5 knowledge?  
6 A I have personal knowledge of filing  
7 the enforcement action and filing the claims of  
8 the bankruptcy.  
9 Q But no personal knowledge of the  
10 prompt investigation?  
11 A My knowledge of the investigation is  
12 based on the investigative file.  
13 Q So other than Paragraph Nos. 1  
14 through 3, Paragraph Nos. 22, 23, 24, 25, 26, and  
15 parts of 27, you do not have personal knowledge of  
16 the assertions in your declaration?  
17 MR. SCHWARTZ: Objection.  
18 THE WITNESS: That's not what  
19 I was saying. I want to make a  
20 correction as to Paragraph No. 2.  
21 Q First the correction.  
22 A I think I stated that my knowledge  
23 of the investigation is based upon the  
24 investigative file. The facts that I assert in  
25 the declaration are based on the facts in the

IC0225b.txt

57

1  
2 investigative file.

3 Q And my questions have presumed other  
4 than the investigative file, whether you have  
5 personal knowledge of the assertions?

6 MR. SCHWARTZ: I think you're  
7 missing the distinction she's drawing,  
8 which is the same one I tried to draw  
9 and you're about to get as she  
10 clarifies.

11 THE WITNESS: And that's what  
12 I keep trying to say. If I have other  
13 personal knowledge, it's privileged.  
14 The facts asserted in this declaration  
15 as I've described them are based on  
16 facts in the investigative file.

17 MR. SCHWARTZ: Do you  
18 understand difference? In other  
19 words, the declaration was written on  
20 the basis of the investigative file.  
21 That says nothing about whether or not  
22 Ms. Malloy also has personal knowledge  
23 of some of those events. It's talking  
24 about that basis for the assertions in  
25 the declaration.

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1  
2 Q And to clarify, my questions were

3 based on your personal knowledge, not knowledge  
4 derive from what's in the file.

5 MR. SCHWARTZ: No. Your  
6 question was whether the basis for the  
7 assertions in the declaration was  
8 personal knowledge, which is not the  
9 investigative file. And I think we  
10 all understood that, and that was the  
11 answer.

12 MR. LYONS: Yes.

13 MR. SCHWARTZ: But that  
14 doesn't mean that she doesn't have  
15 personal knowledge about some of the  
16 events that are described in some of  
17 those paragraphs. For example, take  
18 one that we know that she doesn't have  
19 personal knowledge of, something that  
20 happened before she was hired. On  
21 August 28, 2006 the national call  
22 center was first contacted.

23 The basis for putting that in  
24 the declaration, what you've heard,  
25 was a review of the investigative

59

1  
2 file. That doesn't mean, however,  
3 that she doesn't also have personal  
4 knowledge of the August 28, 2006 call.  
5 That just means that wasn't the basis  
6 for including it as an assertion in  
7 the declaration. Do you understand

IC0225b.txt

8                   that now?

9                   MR. LYONS: No.

10                  Q         Do you have personal knowledge of  
11       the August 28th call?

12                  A         As he said, let's use an example of  
13       one that we all know Ms. Malloy does not have  
14       personal knowledge of.

15                  MR. SCHWARTZ: Because ones  
16       that she actually does have personal  
17       knowledge of, that's all going to be  
18       privileged. So the declaration was  
19       specifically drafted so as not to rely  
20       on that privileged information.

21                  MR. LYONS: My question were  
22       what is your personal knowledge. If  
23       you believe your revelation of your  
24       personal knowledge is going to be  
25       privileged, then you make a note of

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1  
2                   privilege and instruct your witness  
3       not to answer.

4                   MR. SCHWARTZ: That wasn't  
5       your question.

6                   THE WITNESS: I think the  
7       record speaks for itself.

8                   MR. LYONS: I think the  
9       question speaks for itself, too.

10                  MR. SCHWARTZ: I think it  
11       speaks for two different things.

12    IC0225b.txt  
13    THE WITNESS: Well, I answered  
14    the question, and I think the  
15    objections were made.

16    Q         Let's turn to the proof of claim  
17    that was filed, which was Exhibit S to your  
18    declaration. In that proof of claim, it states  
19    debt was incurred May 21, 2004.

20    What's the basis for the EEOC's  
21    assertion that Delphi's debt to it was incurred  
22    May 21, 2004?

23    A         I don't recall. It had to be  
24    something in the investigative file, but I don't  
25    recall as I sit here.

26    Q         As long as we have Exhibit S in

61

1  
2    front of us, that's your signature?

3    A         Yes, it is.

4    Q         And that's the proof of claim that  
5    you recall being filed?

6    A         That I recall filing, yes.

7    Q         From the time Mr. Straughter his  
8    charge of discrimination through the date the EEOC  
9    filed its proofs of claim, what new facts came to  
10    the EEOC's attention regarding the alleged policy  
11    that violated the ADA?

12    MR. SCHWARTZ: Objection.

13    Privileged. I mean other than facts  
14    that Delphi itself produced back to  
15    the EEOC or that have been disclosed  
16    in discovery and enforcement

IC0225b.txt

17                   proceedings in the Western District of  
18                   New York.

19                   Q         What is the basis for the EEOC's  
20                   assertion that it acted with excusable neglect in  
21                   filing proofs of claim after the Delphi bar date?

22                   MR. SCHWARTZ: Objection.

23                   THE WITNESS: I believe the  
24                   basis for our assertion is set forth  
25                   in the memorandum of law in our

62

1  
2                   position to Delphi's motion.

3                   Q         Any other bases not set forth in the  
4                   memorandum?

5                   MR. SCHWARTZ: She's only a  
6                   person. She's not a 30(b)(6) witness  
7                   testifying on behalf of the EEOC.

8                   MR. LYONS: Wait a second.

9                   You're to declare who's testifying in  
10                  support of excusable neglect?

11                  MR. SCHWARTZ: Sure.

12                  Q         So, again, are there any other bases  
13                  of excusable neglect, other than in your  
14                  memorandum that the EEOC filed of which you are  
15                  aware?

16                  A         I think the memorandum covers it,  
17                  including the fact that Mr. Straughter did not  
18                  even come to the EEOC. I believe it was after the  
19                  bar date already at that time, and his claim in  
20                  any event is not a prepetition claim.

21                   A        IC0225b.txt  
22                   I want to correct something as far  
23                   as personal knowledge here.  
24                   Q        Did I want to?  
25                   A        I did, yes. I do also have personal  
knowledge of the contents of the EEOC's regional

63

1  
2                   attorneys' manual. I have read it.  
3                   Q        Okay. Thank you. Generally  
4                   speaking, for an employee to recover front or back  
5                   pay, does the employee have to be terminated by  
6                   some wrongful act of the employee?

7                   MR. SCHWARTZ: Objection to  
8                   the form.

9                   THE WITNESS: No.

10                  Q        What other instances can they get  
11                  front and back pay?

12                  A        Someone could be paid a lower rate,  
13                  for example, than they should be being paid.

14                  Q        Any other basis to get front and  
15                  back pay?

16                  A        You're asking for my legal opinion.

17                  MR. SCHWARTZ: Objection. I  
18                  will send the research on the ADA.  
19                  They could potential recover lost  
20                  wages for wonderful termination,  
21                  failure to get a promotion or other  
22                  pay grade. If someone, for example,  
23                  was not credited for sick leave, those  
24                  days might be recoverable. There's  
25                  all sorts of things that are

IC0225b.txt

64

1

2 potentially recoverable.

3 Q other than the list mentioned by  
4 counsel, is there any other basis to get front and  
5 back pay, to your knowledge?

6                   A        If someone was suspended without  
7 pay, for example.

8 Q Any other basis to get front and  
9 back pay?

10 A I would have to research it. That's  
11 what I can think of sitting here right now.  
12 Constructive discharge.

13 Q Are you aware whether any employee  
14 suffered any of the litany of consequences based  
15 upon Delphi's alleged policy to require medical  
16 release forms referenced in the EEOC complaint?

17 A Stanley Straughter.

18 Q Other than Mr. Straughter?

19 MR. SCHWARTZ: Objection.

20 It's privileged, other than the three  
21 individuals that Delphi disclosed.

22 MR. LYONS: Just so it's  
23 clear, you're instructing privilege  
24 with respect to anybody other than  
25 Straughter or the three employees that

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## 2 Delphi disclosed?

3 IC0225b.txt  
4 MR. SCHWARTZ: Correct.

5 THE WITNESS: But I think I  
6 can say that -- I'm sorry. I can't.  
7 We're in discovery in the federal  
court action.

8 MR. SCHWARTZ: Yes, the  
9 investigation is ongoing, but --

10 THE WITNESS: I've provided my  
11 initial disclosures to Delphi.

12 MR. SCHWARTZ: That's okay.

13 Q But I'm just clarifying you're  
14 refusing to answer the question. Let me rephrase  
15 that.

16 MR. LYONS: You're instructing  
17 the witness not to identify other  
18 Delphi employees suffering the adverse  
19 acts from Delphi's alleged medical  
20 release form policy based upon the  
21 three privileges?

22 MR. SCHWARTZ: I don't think I  
23 can assert deliberative process on  
24 this one, but work product and  
25 attorney-client, yes. And I'll say

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1  
2 also I think in a very real sense, all  
3 Delphi employees who are subject to  
4 that illegal policy are harmed by it.  
5 Even those that comply with it are  
6 harmed by it.

7 THE WITNESS: That reflects

IC0225b.txt

8 our position.

9 MR. LYONS: I think we had a  
10 clear answer, but I'm not sure.

11 MR. SCHWARTZ: We will not  
12 disclose with specificity Delphi  
13 employees, other than Mr. Straughter  
14 and the three employees Delphi  
15 disclosed back to the EEOC that were  
16 harmed by the policies.

17 MR. LYONS: And when you mean  
18 disclose with specificity, you won't  
19 identify?

20 MR. SCHWARTZ: I won't give  
21 you their names, correct.

22 Q Do such employees exist?

23 A I can't answer that question.

24 That's information that's within Delphi's control.

25 Q Well, to the EEOC's knowledge, do

67

1  
2 any employees, not by name, but do any other  
3 Delphi employees, other than Mr. Straughter or the  
4 three disclosed in Delphi's information statement,  
5 exist that suffered harm as a result of Delphi's  
6 alleged illegal policy?

7 A I have every reason to believe that  
8 Delphi has subjected numerous employees to this  
9 illegal policy, so, yes, those employees exist.

10 Q Well, explain this every reason?

11 A Delphi indicated in the

12                   **IC0225b.txt**  
12       investigation and papers that you have in front of  
13       you that it subjects every employee who is out  
14       sick to this illegal inquiry.

15                   Q       And have employees suffered harm as  
16       a result of this allegedly illegal policy, in the  
17       EEOC's view?

18                   A       Yes.

19                   Q       Has the EEOC quantified that harm on  
20       an individual-by-individual basis?

21                   MR. SCHWARTZ: Objection to  
22       the form.

23                   THE WITNESS: We have an  
24       obligation under Rule 26 of the  
25       Federal Rules of Civil Procedure to

68

1  
2                   disclose to Delphi individuals with  
3       knowledge of the claim in this case  
4       and calculation of their damages. We  
5       have satisfied our obligations under  
6       that rule.

7                   Q       So --

8                   A       we have an ongoing obligation,  
9       however.

10                  Q       So all of EEOC's information on  
11       individual employees who suffered harm is  
12       reflected in the Rule 26 disclosures?

13                  A       We haven't had discovery in that  
14       case yet, so --

15                  Q       So the EEOC has made no disclosures  
16       to date?

IC0225b.txt

17 A we have made Rule 26 disclosures,  
18 yes.

19 Q And those disclosures have  
20 identified the universe of employees who have  
21 suffered harm as a result of Delphi's allegedly  
22 illegal policies?

23 A Oh, no, I certainly wouldn't say  
24 that.

25 Q Then I'm not following.

69

1  
2 A we don't have access to that  
3 universe.

4 Q That's my question. To the EEOC's  
5 knowledge -- again, I preface my question to the  
6 EEOC's knowledge. The EEOC has disclosed  
7 employees who the EEOC is aware may have suffered  
8 damages as a result of Delphi's illegal policies?

9 A Yes.

10 Q The EEOC hasn't failed to disclose  
11 someone who the EEOC is aware of who has suffered  
12 harm as a result of Delphi's illegal policies?

13 A No.

14 MR. LYONS: I think I'm done.  
15 (Whereupon, the deposition  
16 concluded at 9:27 p.m.)

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2                   C A P T I O N  
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4     The Deposition of MARGARET MALLOY, taken in the  
5     matter, on the date, and at the time and place set  
6     out on the title page hereof.

7  
8

9     It was requested that the deposition be taken by  
10    the reporter and that same be reduced to  
11    typewritten form.

12  
13

14    It was agreed by and between counsel and the  
15    parties that the Deponent will read and sign the  
16    transcript of said deposition.

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IC0225b.txt

71

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2 C E R T I F I C A T E

3

4 STATE OF \_\_\_\_\_:

5 COUNTY/CITY OF \_\_\_\_\_:

6

7 Before me, this day, personally appeared  
8 MARGARET MALLOY, who, being duly sworn, states  
9 that the foregoing transcript of his/her  
10 Deposition, taken in the matter, on the date, and  
11 at the time and place set out on the title page  
12 hereof, constitutes a true and accurate transcript  
13 of said deposition.

14

15

16

MARGARET MALLOY

17

18

19 SUBSCRIBED and SWORN to before me this \_\_\_\_\_  
20 day of \_\_\_\_\_, 2007, in the  
21 jurisdiction aforesaid.

22

23

24

25 My Commission Expires \_\_\_\_\_ Notary Public

72

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2 DEPOSITION ERRATA SHEET

IC0225b.txt

3 RE:  
4 FILE NO.  
4 CASE CAPTION: IN RE: DELPHI  
5 DEPONENT: MARGARET MALLOY  
6 DEPOSITION DATE: FEBRUARY 25, 2008  
6 To the Reporter:  
7 I have read the entire transcript of my Deposition  
8 taken in the captioned matter or the same has been  
8 read to me. I request for the following changes  
9 be entered upon the record for the reasons  
9 indicated.  
10 I have signed my name to the Errata Sheet and the  
10 appropriate Certificate and authorize you to  
10 attach both to the original transcript.

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
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23 \_\_\_\_\_

24 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
25 MARGARET MALLOY

73

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2                   I N D E X  
3  
4                   E X H I B I T S  
5  
6 Malloy              Description              Page  
6 For Ident.

7 1              Declaration of Margaret Malloy.       8

IC0225b.txt

|    |   |   |    |
|----|---|---|----|
| 8  | 2 | Exhibits to declaration of Margaret Malloy. | 8  |
| 9  | 3 | Declaration of Margaret Malloy.             | 35 |
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74

12                   IC0225b.txt  
13                   true and correct transcription of my  
14                   shorthand notes.

15                   I further certify that I am  
16                   neither counsel for nor related to any  
17                   party to said action, nor in any wise  
18                   interested in the result or outcome  
19                   thereof.

20                   IN WITNESS WHEREOF, I have  
21                   hereunto set my hand this 27th day of  
22                   February, 2008.

23

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24                   I. Iris Cooper

25